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Frazier, 63 Ia. 457; *Waterson v. Devoe*, 18 Kan. 223. That the title relates back to the time of the purchase for the purpose of substantial justice. *Conn. Mut. L. Ins. Co. v. Bulte*, 45 Mich. 113. That it is an election to occupy the relation of purchaser with all the rights and incidents which the law attaches. *Williams v. Townsend*, 31 N. Y. 411. A tax title, however, is paramount to existing estates, becoming absolute after two years. *Langley v. Chapin*, 134 Mass. 82, and is *prime* to all other incumbrances. *In re Douglas*, 41 La. Ann. 765, although it does not affect prior incumbrances. *Monow v. Dows*, 28 N. J. E. 459. And, although the title is one acquired at a second sale of the property for taxes, the purchaser gets a good title. *Diamond Coal Co. v. Fisher*, 19 Pa. (7 Harris) 267, providing the proceedings are regular and the owner has not redeemed. *Atkins v. Hinman*, 7 Ill. 437. Nor is he liable for money paid by the former purchaser under an older assessment, as to which he was not in default. *Smith v. Laumier*, 84 Mo. 672. Only in case the title he acquired is defective, is he liable to make compensation. *Stebbins v. Horton*, 4 Kan. 353.

RAILROADS—INJURY TO ANIMALS ON OR NEAR TRACK—REQUIREMENTS AS TO FENCES.—*MILLER V. CHICAGO, B. & Q. R. CO.*, 105 PAC. 908 (WYO.).—*Held*, that a constitutional requirement making railroads liable for animals killed by them on an unfenced track outside of an incorporated town or village, do not require the fencing of station grounds outside of incorporated cities and villages, where public convenience requires the same to remain open.

It is an almost universal rule that the statutes requiring railroad companies to erect fences and cattle guards along the right of way, do not apply to points where a compliance with the statute would seriously interfere with the company in operating its road, or the public in doing business with the company, as in the case of depot grounds. *Mobile & O. R. Co. v. House*, 96 Tenn. 552; *Chicago & G. T. R. Co. v. Campbell*, 47 Mich. 265; *Robertson v. Atlantic & P. R. Co.*, 64 Mo. 412; *Moses v. Southern P. R. Co.*, 18 Ore. 385; *Contra: Buffalo, N. Y. & E. R. Co. v. Bradley*, 34 N. Y. 427. And as a general rule the depot grounds are held to extend to the switch and sidetrack limits. *Chicago, B. & Q. R. Co. v. Hans*, 111 Ill. 114; *Davis v. Burlington, M. & R. Co.*, 26 Iowa 549; *Indiana B. & R. Co. v. Leak*, 89 Ind. 596. But the question of the extent of the depot grounds is usually held to be a matter of fact for the jury to decide. *Railroad Co. v. Newbrander*, 40 Ohio St. 15; *Indiana B. & W. R. Co. v. Hale*, 93 Ind. 79; *Snell v. Minneapolis, S. P. & S. M. R. Co.*, 87 Minn. 253. Private shipping points, however, are not excepted, even though occasionally used by the railroad company. *Kansas City, F. S. & G. R. Co. v. Hays*, 29 Kan. 193.

SALES—BREACH OF WARRANTY—COUNTERCLAIM FOR DAMAGES.—*SAPP V. BRADFIELD*, 125 S. W. 721 (KY.).—In an action on a note, given for the price of a horse sold to the defendant by the plaintiff, to be used in logging operations, and with a warranty of soundness, *held*, that the defendant could counterclaim as damages only the amount expended on

feed and medical attendance, after notice was given to plaintiff that the horse was worthless, and an offer to return, but not the profits lost, and expenses incurred in hiring other teams to complete his contract with a third person.

The general rule is, that when an article is sold with a warranty of fitness, express or implied, the purchaser without offering to return it or to give notice to the vendor of its defects, may, if sued for the price, recoup damages for such breach. *Bonnell v. Jacobs*, 36 Wis. 59; *Murray v. Smith*, 4 Daly 277; *Dukes v. Nelson, Ex'or.*, 27 Ga. 457, or he may bring an action directly on the warranty without complying with these conditions. *Borrikins v. Bevans*, 3 Rawle, 23; *Komejoy v. White*, 10 Ala. 255. Even if the vendor engages that the article shall be returned, if it does not fulfill the warranty, still this does not preclude the vendee from bringing an action for its breach. *Douglas Axe Manufacturing Co. v. Gardner*, 10 Cush. 88. But, if by the agreement the seller is given an opportunity to remedy the defects after he has notice of them, the buyer cannot claim damages for breach of the warranty unless he gave notice, though he did not know what the defect was. *Zimmerman Manuf. Co. v. Dolph*, 104 Mich. 281. In any case the purchaser may bring his action for damages for the breach, although the note given by him is unpaid when he brings it. *Trohreich v. Gammon*, 28 Minn. 476. Even though a judgment has been obtained on the note. *Volland v. Baker*, 32 Neb. 391. Usually the measure of damages for breach of a warranty is the difference between the value of the goods, as they in fact were, and their value if they had been as warranted. *Porter v. Pool*, 62 Ga. 238; *Tiffany on Sales*, p. 248. And whatever losses directly result from the breach, e. g., loss of a crop, due to the inferior quality of seed purchased and sown. *Wolcott v. Mount*, 38 N. J. L. 496. *Contra: Butler v. Moore*, 68 Ga. 780; loss of profits due to a poorly constructed refrigerator. *Beeman v. Bantee*, 10 N. Y. St. Rep. 325. But the true rule in respect to special damages is what a reasonable man, with the knowledge of the parties, would have contemplated as the probable result of a breach of warranty had he applied his mind to it. *Tiffany on Sales*, p. 249.

TRIAL—QUOTIENT VERDICT—WASHINGTON LUNA PARK CO. v. GOODRICH, 66 S. E. 697 (VA.).—*Held*, that the finding of scraps of paper in a jury room after it was vacated, with the names of the jurymen thereon, and the amounts opposite their names added together and divided by 12, producing a quotient of between \$2,300 and \$2,400, did not show a binding agreement to render a quotient verdict; the verdict returned being for \$2,000.

A verdict arrived at by chance or lot will be set aside, and where, by previous agreement a verdict is reached by taking the average of the sums named, it is vitiated. *Haight v. Hoyt*, 50 Conn. 583. But an averaged verdict obtained by taking one-twelfth the aggregate amount of the several estimates of the jurors, is not objectionable when there was no antecedent agreement to be bound by the result, and when each